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NO. 82 -

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IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 19

MICHELLE DYER, a minor by RUBY DYER
her parent and natural guardian

Appellants

v.

LOWER BUCKS COUNTY HOSPITAL

Appellee

On Appeal from the Supreme Court of Pennsylvania, No. 233 E.D. Allocatur Docket 1982

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

Historically in Western Civilization under the Common Law Doctrine of Paterfamilias a minor child was considered as belonging to or being the property of the father. Consistent with this premise, the Common Law assumed that the father had the right to the property and services of his children, including any cause of action which existed on behalf of his children. As such, it was perfectly logical to conclude that the father had the right to allow any cause of action of his children to lapse by his inaction in failing to perfect same within a statutory limitation period.

The rights of children have, however, advanced since early common law and a child is no longer the property of his parent; instead, it is recognized that children have their own independant rights which are subject to constitutional protection. Along with the foregoing advances with respect to children's rights has come the recognition by most jurisdictions within this country that a child's right to sue, despite its intangible nature, is a property right and that a child cannot be deprived of that right through inaction of a parent or guardian during the period of time when the child himself is barred from commencing the action in his own name because of his minority.

A few states, however, still do not recognize the independant constitutional right of a child with respect to a cause of action and adhere to the ancient common law view that parents have the right to control, even to the point of dissipating, any cause of action of their children. Pennsylvania is one of these states. Pennsylvania Statutory Law contains a provision of general application which provides that

Statutes of Limitation are not tolled by minority, regardless of whether or not the minor has a competent parent or guardian to protect his or her interests. Curiously, however, despite this general statutory provision, in certain specific areas of the law which Pennsylvania has borrowed from other jurisdictions, such as No-Fault Automobile Insurance Law, Pennsylvania does have a statutory provision tolling the Statute of Limitations during minority.

Pennsylvania's foregoing position raises two serious constitutional questions in the context of the instant medical malpractice case. In this case, minor Plaintiff, Michelle Dyer suffered permanent and disfiguring burn injuries to her chest area at the time of her birth as a result of the clear negligence of the Defendant, Lower Bucks Hospital. Michelle's subsequent malpractice action was dismissed, however, because it was not filed within the period of Pennsylvania's two year Statute of Limitations. It was dismissed despite the fact that during the limitation period Michelle had no competent parent or legal guardian in loco parentis who could have filed the action on her behalf since her mother, Ruby Dyer, was only nineteen (19) at the time of Michelle's birth and was herself a minor under Pennsylvania Law, and her father was not in loco parentis.

The two (2) questions presented by this case are:

1. Does the due process clause of the Federal Constitution permit the Pennsylvania Statute of Limitations to run against a minor who has no competent adult individual in loco parentis to protect his or her interest?

2. Do the Pennsylvania Statutes of Limitations deny equal protection to minors suffering injuries not sustained in an automobile accident, by allowing the statute to run against them during their minority, while tolling the statute during the minority of those minors injured in automobile accidents?

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OPINIONS BELOW

The Order of the Supreme Court of Pennsylvania denying Appellants' Petition for Allowance of Appeal, from which this Appeal is taken, is set forth in the Appendix at A1.

The opinion of the Superior Court of Pennsylvania which is unreported, is set forth in Appendix A2. Also attached at Appendix A10 is the Opinion of the Superior Court of Pennsylvania in DeSantis v. Yaw, _____Pa. Super_____, 434 A.2d 1273 (1981), in which majority opinion the Superior Court of Pennsylvania, while upholding the constitutionality of the application of the Statute of Limitations to minors solely on the basis of the Doctrine of Stare Decisis, severely critized the application of the statute to minors and set forth the opinion that such application deserves serious reconsideration because it is inconsistent with constitutional due process and equal protection.

JURISDICTION

The instant case involves a medical malpractice action in which Appellant is seeking review of the decision of the Supreme Court of Pennsylvania of August 10, 1982 denying Appellants' Petition for Allowance of Appeal. The Petition for Allowance of Appeal to the Supreme Court of Pennsylvania raised the question as to the Federal Constitutional validity of the Pennsylvania State Statute -- 42 Pa. C.S.A. §5533 -- which allows the Statute of Limitations to run against a minor. The Pennsylvania Supreme Court's denial of the Petition for Allowance of Appeal had the effect of affirming the constitutional validity of this statutory provision. The Notice of Appeal in this case was filed with the Clerk of the Pennsylvania Supreme Court on October 29, 1982. The jurisdiction of this court is invoked under 28 U.S.C. §1257(2). Title 28 U.S.C. §2403(b) may be applicable.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The Pennsylvania Statute which is the subject of this constitutional challenge provides as follows:

> "Except as otherwise provided by statute, infancy, insanity or imprisonment does not extend the time limited by this subchapter for the commencement of a matter." 42 Pa.C.S.A. §5533

The Federal Constitutional provisions that it is submitted are violated by the foregoing Pennsylvania State Statute are as follows:

AMENDMENT XIV OF THE UNITED STATES CONSTITUTION

> "Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On September 5, 1972, Petitioner, Michelle Dyer, was born at Lower Bucks Hospital as a premature baby, weighing only three (3) pounds. At the time of her birth, her mother, Ruby Dyer, was herself a minor only nineteen (19) years of age. Michelle was born of a broken home, her natural father, at the time of her birth, not residing with her mother, but being incarcerated in prison. After birth, Michelle was placed in the Lower Bucks Hospital Nusery for premature children and was subsequently attached to a heart monitor which was apparently standard procedure for premature infants. The monitor worked by the means of an electrode that was attached to the child's chest and which signaled an alarm if the child ceased to breath. On the next day after Michelle's birth at approximately 8 o'clock a.m., a staff pediatrician from Lower Bucks Hospital, one Dr. Albert Flacco, who was entrusted with Michelle's care, noted on a hospital record that the monitor "has to be disconnected because of excess irritation of skin on trunk, from what?, probably lubricant from electrodes" (R44a 140a). At 3:00 p.m., that same day, the Lower Bucks Hospital records indicated that Dr. Flaco again examined Michelle and directed that she be transferred to Thomas Jefferson University Hospital, Intensive Care Unit, because of life threatening respiratory difficulties (R46a 140a).

Prior to Michelle's discharge to Jefferson, her mother, Ruby Dyer, was visited in her hospital room by Michelle's Doctor, presumably Dr. Flacco, and advised that Michelle was having breathing problems and had to be transferred to Jefferson's Intensive Care Unit for premature children At this same time, Mrs. Dyer was also advised by Dr. Flacco that she was

not to be alarmed but that her new born child was apparently allergic to a chemical in a gel that was used with the electrodes, and that as a result Michelle had developed "an irritated rash" on her chest. Mrs. Dyer was specifically told that this rash would shrink and clear up in time. Her testimony to this effect is corroborated by Lower Bucks Hospital's own records and reports signed by Dr. Flacco, which described Michelle's condition as merely "excess irritation" (R140a). Nowhere in the Lower Bucks report was there any mention of burns to Michelle, let alone any second and third burns to her chest area. Dr. Flacco also admitted that he never mentioned anything to Mrs. Dyer at the time of Michelle's birth about Michelle having received any burn injury.

Curiously, however, immediately upon Michelle's admission to Jefferson Hospital that same day for her severe respiratory problems, the admitting physician noticed and diagnosed Michelle's chest as having second and third degree burns (R148a 149a).

At Jefferson Hospital, Michelle was admitted into the Intensive Care Nusery and was treated primarily for her respiratory problems which were diagnosed as Hyaline Membrane Disease. During her stay at Jefferson, Michelle was also treated for several other health related problems including Jaundice and the second and third degree burns of her chest previously mentioned. It was the opinion of the Plastic Surgeon who examined Michelle at Jefferson the day after her admission that the child had "burns on the chest probably produced by hypertonic solution" which is an electrode cleaning solution (R152a). Michelle was finally discharged from Jefferson in the latter part of November, 1972.

After Michelle's discharge from Jefferson, she did not, as in the normal case, go home to reside with her mother. Instead, during the first several years of Michelle's life her mother left her in the care of third persons, and only visited Michelle infrequently. At that time, Michelle's mother, Ruby Dyer, was herself a minor and was obviously not competant to care for the child as is apparent from the fact that she left Michelle in the care of third persons. At that time Mrs. Dyer was unemployed and survived by means of public assistance.

It was Mrs. Dyer's testimony during her deposition that during the first several years of Michelle's life, Mrs. Dyer did not realize that what she had been told and thought was a rash on her child's chest was not shrinking or clearing up as she had been led to believe by personnel at Lower Bucks Hospital, but that, in fact, the chest appeared to be becoming white and scarred (R108a). While the Lower Court either did not accept this testimony or concluded, under an objective standard, that Mrs. Dyer should reasonably have been aware of the burn injury earlier on in Michelle's life, thereby not applying the discovery rule to toll the Statute of Limitations, the facts are not disputed that Michelle was first taken to a physician with respect to the problem regarding the burn injury to her chest in 1977. The physician, Dr. Albert Davne, advised Mrs. Dyer for the first time that her daughter had suffered second and third degree burns of her chest and that this would result in permanent and disfiguring scarring. Secondly, Dr. Davne advised that Michelle's nipples had been destroyed and that she could not be expected to develop a functional breast as a result. In addition, the Doctor expressed the opinion that future breast development may not take place and that the psychological effect of this injury might lead to serious emotional-mental problems commencing with the onset of adolescence.

As a result the instant action was commenced on June 13, 1977 by the filing of a "Notice Complaint" with the office of the Medical Malpractice Administrator for the Commonwealth of Pennsylvania. It was thereafter referred to the Court of Common Pleas of Bucks County, Pennsylvania and a Complaint against the hospital was formerly filed with that Court on August 1, 1977. Defendant answered the Complaint raising the affirmative defense of the Statute of Limitations by way of new matter. Thereafter, subsequent to the deposition of Mrs. Dyer, Defendant filed the instant Motion for Summary Judgment. Plaintiff answered the Motion for Summary Judgment asserting as new matter, inter alia, that the Constitutional provisons of Due Process and Equal Protection require that the Statute of Limitations regarding any possible cause of action for malpractice be tolled during minority in a case such as this.

The Bucks County Court granted the Motion for Summary Judgment, and the grant of this Motion was affirmed by the Pennsylvania Superior Court, although in affirming with respect to the issue of the Constitutionality of the Statute of Limitations as applied to minors, the Superior Court cited the recent case of DeSantis vs. Yaw, _____Pa. Super ____, 434 Atlantic 2d, 1273 (1981), in which case the majority of the Pennsylvania Superior Court Panel concluded that it was time Pennsylvania reconsidered the application of the statute to minors because of serious Due Process and Equal Protection considerations. From the decision of the Pennsylvania Superior Court, Appellant filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court, which despite the Pennsylvania Superior Court's conclusion that it was time to reconsider the Constitutional validity of Pennsylvania's Common Law Doctrine,

refused to grant the Petition for Allowance of Appeal, thereby, affirming the Constitutional validity of Title 42 Pa.C.S.A. §5533 which provides for the running of the Statute of Limitations against a minor.

REASONS FOR PLENARY CONSIDERATION

It is respectfully submitted that the Commonwealth of Pennsylvania's continued adherence to those vestiges of the Doctrine of Paterfamilias which permit a parent's inaction to deprive a child of an essential property right, results in a clear deprivation of the constitutional rights of the child, and has no place in modern constitutional thought. The law now recognizes that parents no longer retain the unquestioned right to the services and property of their minor children. On the contrary, even in Pennsylvania it has been recognized that the relationship between parent and child is no longer one involving a property right. See e.g. Commonwealth ex rel Teitelbaum vs. Teitelbaum, 160 Pa. Super 286, 50 A.2d 713 (1947). Fortunately, the rights of children have advanced since the days of the early common law to the point where it has been recognized that children too have constitutional rights. In re Gault, 387 U.S. 1, 87 S.C.t. 1428 (1967).

Consistent with the foregoing advances in constitutional thought, the vast majority of jurisdictions within these United States have recognized that a child's right in an existing cause of action, despite its intangible nature, is a property right with respect to which the child cannot be deprived by the action of inactions of its parents. In particular, most jurisdictions have concluded that a child cannot be depirved of a cause of action through the failure of a parent or guardian to institute suit on his behalf during the period of the child's minority when the child himself is barred from bringing the action in his own name. As is stated in 51 Am Jur 2d 747, §178:

> "In virtually all states today some form of statutory provision is made for the suspending of

> the operation of Statutes of Limitation against causes of action in favor of persons under disability or who do not have capacity to sue."

See also Table of States in which minority suspends the Statute of Limitation found in 4 Am Jur Trials p. 608 and attached hereto at Appendix A20.

A few states, however, have still refused to recognize the independant constitutional rights of children with respect to a cause of action and continue to adhere to the ancient Common Law Doctrine of Paterfamilias by concluding that a parent has the right to deprive his child of a cause of action by failure to commence an action on the child's behalf within a limitation period which runs during minority. The Commonwealth of Pennsylvania, unfortunately, is one of these states. Through the lobbying efforts of the insurance industry, Pennsylvania still retains the view that minority does not toll the Statute of Limitations. This position is one of Statutory Law in Pennsylvania -- 42 Pa. C.S.A. §5533 -- and applies even in cases such as the instant one, where the minor has no competent parent or guardian in loco parentis.

We submit that in this day and age, in light of the advances in constitutional thought, notably in the area of equal protection, fundamental fairness, and children's rights, it is clearly unconscionable for the courts of Pennsylvania to permit the Statute of Limitations to run against a new born child who has no competent adult individual in loco parentis to protect that child's rights. To hold to the contrary, is to clearly and certainly deprive the child of a right in a cause of action for personal injuries, which despite its intangible nature, has been recognized as a form of property in the Commonwealth of Pennsylvania DeSantis vs. Yaw, _____Pa. Super_____, 434 A.2d 1273 (1981).

The majority of the Pennsylvania Superior Court, which has been the last court in Pennsylvania to give any consideration to the

constitutionality of the Pennsylvania Statutory provision allowing the Statute of Limitations to run against minors, has clearly indicated its opinion that such statutory provision not only violates the constitutional provisions of Due Process, but also Equal Protection. DeSantis vs. Yaw, Supra. In that case, although the Superior Court affirmed the constitutionality of the statute in question solely on the basis of stare decisis, the court went into great detail in critizing the constitutional foundation for Pennsylvania's blind adherence to the old Common Law Doctrine.

In the Pennsylvania Superior Court Opinion in DeSantis Supra, the statutory provision subject to this constitutional challenge was analyzed with respect to the fundamental fairness of the application of such a statute to a minor who has no competent adult individual in loco parentis to protect him or her. This, as noted in the Statement of the Case, is the situation in the case at bar. It is self-evident that any minor such as Michelle Dyer, who was a new born at the time of her negligent injury by the Defendant Lower Bucks Hospital, cannot take the necessary steps to adequately protect themselves in the event that they suffer an injury as a result of a party's negligence. First, they are under a legal disability and cannot institute suit in their own name, and obviously of more importance, their tender years prevent them as a practical matter from asserting a claim even if they could. Normally, this is answered by asserting that the child can rely upon his parent or guardian to protect his interest and institute suit on his behalf. This argument, however, has no application in the case at bar.

In this case, the new born in question did not have competent adult parents who could protect her interest. Her natural father separated from the child's mother at the time of or shortly after Michelle

birth and thereafter neither supported nor visited Michelle at all. In essence, Michelle is a child whose father has abandoned her. Michelle's mother, Ruby Dyer, was at the time of Michelle's birth herself a minor under the then applicable Pennsylvania Law, and as such, even if Mrs. Dyer had desired to institute suit on behalf of her daughter, she would have been under legal disability to do so. Furthermore, Mrs. Dyer did not reside with and care for her daughter during the first several years of her life; instead, Michelle was left in the care of third persons, neither her father or mother.

In such a circumstance, the basic reasoning behind the Pennsylvania Superior Court's criticism of the application of Pennsylvania Statute of Limitations to a minor as set forth in DeSantis vs. Yaw, Supra. clearly applies. As the Court stated in that Opinion:

> "Not all children have parents. The minor in Von Colln did not. Appellee's proposition that the limitation is fair "as to minors and parents" cannot be extended to assume that orphanages, foster parents, and juvenile homes have the emotional dedication to fight a prompt legal battle and to maintain the often slow progress through the court system. A foster mother may be honestly dedicated to hot meals and clean linen and emotional support yet quail at the thought of embarking on several years of legal battle for a member of her changeable brood. As to parents themselves, some are lazy or frightened or ignorant or religiously opposed to legal redress. Still, they have their remedy available to them if they choose to use it. A child does not. The situation comes to this: a personal property right belonging to a legally faultless citizen may and often has been forfeited because no legally competent party has volunteered to undertake an action in the child's behalf. By the time the child reaches maturity the property has vanished. For this, it appears, no one is responsible. Can this lack of remedy comport with due process? p. 1276 and 1277

"Can this lack of remedy comport with Due Process?" To ask this question would appear to answer it. Due Process means, in essence, a fundamental fairness. Notions of fairness and what is necessary as a constitutional requirement of fundamental fairness has changed over the years fortunately for all of us. As the Pennsylvania Superior Court recognized, it is not sufficient to answer the questions by, in essence, stating that whatever is, is right. If this was the approach that the courts in this country took, children would still be viewed as property of their parents and Blacks would still be slaves. Fortunately, the capacity of the common law to adopt itself to changing mores and values has long been recognized as one of its greatest strengths. Hurtado vs. California, 110 U.S. 516, 4 S.Ct. 111 (1884). It certainly does not take a great humanitarian to realize that it is simply not fair to deprive a new born child of a cause of actio not because of anything the child did, but because of incapacity or incompetence of the child's parents. This is no more fair than to say to a child that he may be deprived of other opportunities in life because of his race, sex, or religion. To deny this Appeal is, in effect, to say to Michelle Dyer that she is going to be deprived of her right to pursue a cause of action against a clearly negligent hospital and to recov sufficient damages from that hospital in order for her to afford the expensive and time consuming medical costs of plastic and reconstructive surgery necessary for her to lead some semblance of a normal life, merely because she was unfortunate enough not to have competent adult individuals in loco parentis at the time that her injury occurred. Try explaining this to a nine (9) year old child.

While we recognize that the Statute of Limitations promotes a statutory purpose in requiring claimants to bring their actions while

events and evidence are still fresh, and that such a purpose may even generally be constitutional as applied to minors, it would appear that the benefits to be gained by such a purpose do clearly not outweigh the violations of the fundamental right of those few minors who are not fortunate enough to have a competent adult individual who can act on their behalf.

Such a conclusion has not only be recognized by the Superior Court of Pennsylvania, but also by the Court of Common Pleas of Philadelphia in the case of Petri vs. Smith, No. 2798 June Term (1979), in which case the court held that infancy tolls the Statute of Limitations where the parents are not available to investigate the causal relationship between the parties alleged negligence and the injuries sustained by a minor at birth. In such a situation, as the legislatures of the vast majority of states in this country have recognized, and as has been recognized by the courts in the Commonwealth of Pennsylvania who have taken the time to review this situation, the traditional approach of Pennsylvania to the Statute of Limitations as applied to minors no longer fits comfortably into the framework of the law and should be discarded.

Apart from Due Process consideration, it is submitted that the Pennsylvania statute in question violates the Equal Protection Clause of the United States Constitution. There are two (2) basic Pennsylvania Statute of Limitations provisions which are relevent in the context of this Equal Protection argument. First of all, there is the general Pennsylvania Statute of Limitations on personal injury actions which is the subject of the instant challenge, 42 Pa.C.S. §5533, and then there is the Statute of Limitations contained in the Pennsylvania No-Fault

Motor Vehicle Protection Act 40 P.S. §1009.106(c)(5). The former, as noted above, provides for the running of the Statute of Limitations against a minor. The latter, more recently enacted statute in the No-Fault Act, however, expressly provides for the tolling of the Statute of Limitations during ones' minority. The result of these statutes is to distinquish between minors who suffer personal injuries in automobile accidents, and minors who suffer injuries as a result of other types of accidents, such as malpractice as is involved in this case. A minor who suffers injury as a result of an automobile accident is not deprived of his right of action through the lack of initiation of legal proceedings by his parent or guardian; on the other hand, the minor who suffers personal injuries in a malpractice action such as this one is discriminated against and deprived of his right of action unless his parent or guardian over which he has obviously no control, acts on his behalf. The Pennsylvania Superior Court in analyzing this disparity, concluded that it results in a clearly meritorious equal protection argument.

> "By analogy, a provision of our No-Fault Law becomes relevant. Our legislature has afforded to minors injured in motor vehicle accidents an exemption to the bar of the Statute of Limitations. The courts of Massachusetts could see no reason to distinquish loss of parental society because of death, from loss of parental society because of injury; the child was perceived as legally entitled to his relief from harm in either instance. Similarly, distinquishing tort by motor vehicle from other negligent injuries appears invidious. Whether the impairment that the injured adult suffers from is the result of a childhood vehicle injury, a hunting accident, or a fall from a rotting balcony is immaterial to his embarrassment, pain, and loss of future earning power. The legislature has already entitled children to relief from the statutory bar and has found legal entitlement to redress for tort injury under certain circumstances; logic would suggest that

> the entitlement be extended to cover tortious injuries indistinquishable in their effect on the injured person.
>
> If the right is not extended, then an Equal Protection argument becomes apparent. Children injured tortiously during their minority are at present unequally treated: children injured by a motor vehicle may bring suit during their entire minorities by an adult and for another two years in their own name. Children tortiously injured in any other manner have a two-year statutory limit and may enforce their claims only through the voluntary services of an adult, unless they happen to attain majority during the statutory period.
>
> Tortiously injured children would appear to be a reasonable classification; certainly until passage of the No-Fault Law that group suffered equally in its legal treatment. No rational state policy leaps to mind to explain the present difference in treatment." DeSantis vs. Yaw, Supra. p. 1278, 1279

The United States Supreme Court has made it clear that distinctions which bear no fair and reasonable relation to the object of the legislation in question constitute a violation of the Equal Protection Clause of the United States Constitution. Reed vs. Reed, 404 U.S. 71, 92 S.Ct. 251 (1971). With respect to the two (2) foregoing Pennsylvania Statutes of Limitations, it is clear that they discriminate between minors suffering injuries as a result of automobile accidents, and minors otherwise suffering tortious injuries. The question then becomes whether such a difference in treatment has any fair and substantial relation to the legislative purpose behind the enactment of the limitation provisions. The answer to this question, we submit, is that there is clearly no fair and substantial relation behind the purpose of the enactment of the two Statutes of Limitations and the foregoing distinction That distinction is clearly arbitrary and unreasonable. The obvious purpose behind both Statutes of Limitations is to prevent stale claims.

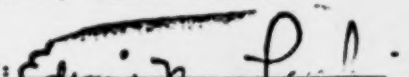
This purpose, however, is not in any way served by discriminating between minors suffering one type of injury as opposed to another. The interest of the state in preventing stale claims from being submitted and the dangers inherent in same would appear to be no less significant in cases where the minor Plaintiff was injured in an automobile accident, than when the minor Plaintiff was injured in another type of accident. Means of proof, recollection of facts regarding the incident surrounding the injury, and other matters of similar nature all present the same situation regardless of how the minor involved was injured. As such, it appears clear that the discrimination against those minors injured in other than automobile accidents is arbitrary and unreasonable and violates their right to equal protection.

The foregoing equal protection problem was recognized not only by the Pennsylvania Superior Court, but also in a very similiar case decided by the Supreme Court of New Hampshire, Carsons vs. Maurer, 424 A.2d 825 (1981). The Carsons case involved a situation clearly analogous to the one presently before this Court, and after thorough consideration the Supreme Court of New Hampshire held the Statute of Limitations provision in question unconstitutional as a violation of equal protection. The Carsons case involved two New Hampshire Statutes of Limitations, one of which, being the general statute, provided that the statute was tolled during minority, and the other of which applied only to malpractice actions and provided that the statute did run against minors who were injured by medical malpractice. In these circumstances, the Supreme Court of New Hampshire held the provision of the malpractice statute of limitations unconstitutional as a violation of equal protection since it permitted the statute to run against the claims of minors, while the generally applicable Statute of Limitations did not. The court

said that there was no reasonable basis for tolling the statute in the case of one injury and not in the case of another. Our situation is, we submit, clearly analogous. In the New Hampshire situation the statute was tolled as to minors in general cases of personal injury, while it was not tolled with respect to minors injured in malpractice cases. In Pennsylvania the statute is tolled as to minors in automobile accident cases but not as to cases involving personal injuries otherwise incurred. The reasoning, however, is exactly the same and there can clearly be no reasonable basis for tolling the statute in the case of one type of injury and not the other. As such, we submit that the instant Appeal presents constitutional questions so substantial as to require plenary consideration, with briefs on the merits and oral argument, for the resolution thereof.

While as noted throughout this statement, most jurisdictions within the United States statutorily provide exemptions for the tolling of the Statute of Limitations during minority, we submit that the necessity for allowing such an exemption in the case of minors who have no competent adult individual in loco parentis clearly rises to constitutional proportions.

BEGLEY, CARLIN & MANDIO

BY: 

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